

EXHIBIT 10

Deposition of Alan Manning Excerpts

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

- - -

IN RE: : Civil Action
: DOCKET NO.
CUNG LE, NATHAN QUARRY, : 2:15-cv-01045-RFB-
JON FITCH, BRANDON VERA, : (PAL)
LUIS JAVIER VAZQUEZ and :
KYLE KINGSBURG, on behalf : CLASS ACTION
of themselves and all :
others similarly :
situated, :
:
Plaintiffs, :
:
v. :
:
ZUFFA, LLC, d/b/a :
ULTIMATE FIGHTING :
CHAMPIONSHIP and UFC, :
:
Defendants. :

- - -

Thursday, February 8, 2018

- - -

Videotaped deposition of
ALAN MANNING, taken pursuant to notice,
was held at the law offices of Berger &
Montague, P.C., 1622 Locust Street,
Philadelphia, Pennsylvania 19103,
beginning at 9:16 AM, on the above date,
before Constance S. Kent, a Certified
Court Reporter, Registered Professional
Reporter, Certified LiveNote Reporter,
and Notary Public in and for the
Commonwealth of Pennsylvania.

* * *

MAGNA LEGAL SERVICES
(866) 624-6221
www.MagnaLS.com

Page 30

1 Q. That's fine.

2 A. -- as I come to them.

3 So in paragraph 6, I mean, I
4 expressed the view that it is possible to
5 think in this case that MMA fighters
6 are -- you know, part of the firm's
7 revenue can be ascribed to their
8 activities.

9 Q. All right. And I'm looking
10 for anything that you have stated in your
11 report that supports that conclusion,
12 which is similar to your conclusion in
13 paragraph 24.

14 A. I mean, in the conclusion as
15 well I made the same point that this is.
16 But I think what I would say is that that
17 is the paragraph that makes the case that
18 the fighters are the key workers, but
19 there are -- I would not -- I do not
20 think that I express in that paragraph
21 the totality of the evidence that one
22 could produce to reach that conclusion.
23 I mean, in a way, I think it is fairly
24 straightforward to think that the people

Page 31

1 are there to watch the fighters, the
2 audience, and so they are the key
3 workers.

4 Q. All right. If we can look
5 now at paragraph 31 again where you cited
6 three factors which would be the
7 appropriate circumstances for labor
8 economists to use wage sharing in
9 analyzing compensation.

10 The -- are there any
11 publications or written materials where
12 you have seen these three factors
13 previously described?

14 MR. CRAMER: Form.

15 You may answer.

16 THE WITNESS: I mean, I
17 think that -- I mean, perhaps if I
18 work through them one at a time.

19 I think it is, you know,
20 very common if one is trying to
21 assess monopsony power to seek to
22 compare compensation to marginal
23 revenue product. So that is very
24 well attested.

Page 32

1 The use of wage share as
2 informative about the extent of
3 competition in the labor markets
4 is well attested, especially in
5 the field of sports economics.

6 I think the second statement
7 that you can't compute wage share
8 if you haven't got data on wage
9 share, I think of that really as a
10 statement of the obvious. It
11 would be hard to get an academic
12 article published saying you can't
13 compute something if you haven't
14 got data on it.

15 And the third one is that I
16 think it is -- relates to the fact
17 that the nature of the data in
18 this case is unusually rich, that
19 you have something akin to event
20 revenue.

21 BY MR. ISAACSON:

22 Q. All right. Have you -- you
23 say -- you list these three factors and
24 say, These are the appropriate

Page 33

1 circumstances for when labor economists
2 use wage share in analyzing compensation.

3 What I'd like to know is,
4 have you ever seen these three factors
5 articulated before in anything in
6 writing, a publication, an article, a
7 textbook, et cetera?

8 MR. CRAMER: Asked and
9 answered.

10 THE WITNESS: I mean, I feel
11 I've answered that one.

12 BY MR. ISAACSON:

13 Q. Well, you told me about how
14 you've seen them individually, but have
15 you ever -- can you point to me to any
16 publication or other -- anything in
17 writing where someone has said that it's
18 appropriate -- labor economists use wage
19 share in analyzing compensation when
20 three appropriate circumstances are met,
21 and then list these three circumstances?

22 A. I -- in expressing my
23 opinion, I'm not simply copying out
24 conclusions that are -- it is not a

1 cut-and-paste job from someone else's
2 article. It is using well-attested
3 techniques and measures from the existing
4 literature, but combining them in a way
5 that I think is wholly appropriate to
6 this particular case. And that is what I
7 think of actually as trying to express an
8 expert opinion.

9 Q. All right. And I understand
10 you think that these are the appropriate
11 circumstances and you stated your reasons
12 for such, but I'd still like to know if
13 anybody -- of you've seen anybody write
14 out before that these are the three
15 appropriate circumstances for labor
16 economists to use wage share in analyzing
17 compensation?

18 MR. CRAMER: Asked and
19 answered.

20 THE WITNESS: I feel I've
21 answered it. These are my own
22 words. Did I cut and paste these
23 from someone else? No.

24 BY MR. ISAACSON:

1 Q. All right. And when you
2 say -- I know you didn't cut and paste
3 them, but have you seen any -- have you
4 seen anybody list these three criteria,
5 you know, in substance as the appropriate
6 circumstance for when you -- labor
7 economists would use wage share in
8 analyzing compensation?

9 A. I mean, I -- in my report
10 here I'm trying to express an opinion on,
11 you know, the particular questions I was
12 asked to address, and obviously that
13 is -- in some sense it is -- you know, it
14 is a particular case. So I am combining
15 well-attested, well-established ideas in
16 a way that is appropriate to that case,
17 and I think that is appropriate to
18 expressing an expert opinion.

19 Q. Right. And you've said to
20 me a couple times that you think these
21 three things are appropriate and I
22 understand that. And you said to me
23 they're not a cut and paste,
24 word-for-word.

1 My question is: Even if
2 they're not word-for-word, have you seen
3 any publication that lists these three
4 things, in sum and substance, as the
5 appropriate circumstance for a labor
6 economist to analyze wage -- to use wage
7 share in analyzing compensation?

8 A. I mean, wage share is very,
9 you know, commonly used in the sport
10 economics literature, so I'm drawing --
11 drawing from that.

12 I think the statement of the
13 question, which is the first criterion is
14 really just a statement of the question
15 in this case as I understand it. So I'm
16 not quite sure how I would take the
17 question in this case from some other
18 pre-existing -- pre-existing.

19 I mean, I think in cases
20 where one is trying to assess the impact
21 of anticompetitive practices, one is
22 trying to compare the actual compensation
23 in this case with compensation in the
24 but-for world.

1 So I think that's completely
2 standard.

3 Q. All right. I still don't
4 know whether you're telling me anybody
5 has listed these three things before.

6 A. I mean, I haven't seen -- I
7 mean, they're totally appropriate, and
8 you know, I'm combining well-attested
9 ideas, well-established ideas in a way
10 that's appropriate to that case, for that
11 combination -- because I'm not aware of
12 somebody who has written about this
13 particular case, that particular
14 combination which I chose to be
15 appropriate to this case and what I
16 think -- that is what I think I should be
17 doing when expressing an expert opinion,
18 I haven't got that.

19 Q. All right. So you've
20 reached the opinion that these three
21 factors are the appropriate circumstances
22 to consider in this particular case.

23 Can you point me to
24 anything -- any literature where these

Page 38

1 three factors were considered appropriate
2 for some other -- for some other type of
3 facts or some other case?

4 A. Well, I think that -- I
5 mean, let me take them in order.

6 Q. I would like them in
7 combination. Not individually, in
8 combination, all three?

9 A. I think --

10 MR. CRAMER: Form.

11 You may answer.

12 THE WITNESS: I mean, what

13 I'm doing here is taking well-
14 established ideas individually and
15 drawing on ideas from established
16 work, well-established, and
17 combining them in a way that is
18 appropriate for this case. I
19 think that is appropriate to what
20 one is asked to do as an expert.

21 BY MR. ISAACSON:

22 Q. You've told me that several
23 times.

24 A. Yeah.

Page 39

1 Q. You've got it on the
2 record --

3 A. Yes.

4 Q. -- that you feel it is
5 appropriate to combine these three
6 circumstances in this -- for the facts of
7 this case.

8 And what I'm asking you now,
9 have you run across, in any of your
10 research or writing or teaching, any
11 other specific facts or cases where
12 someone said the three circumstances that
13 you've identified are the appropriate way
14 to determine that wage share should be
15 used in analyzing compensation, all three
16 in combination?

17 A. But there is no equivalent
18 to this case in -- you know, it's about
19 the particular case.

20 Q. So looking at paragraph 10,
21 you discussed the question in this
22 litigation.

23 "In this litigation, the
24 question to be considered is different.

Page 40

1 It is, "How do the earnings of fighters
2 compare to what they would have earned in
3 a competitive market?"

4 Is that the appropriate
5 question in this case?

6 MR. CRAMER: Form.
7 Objection to form.

8 THE WITNESS: I mean, I
9 think one is seeking a comparison
10 of the actual earnings to what
11 they would have been in the
12 but-for world, which is the
13 absence of the challenged conduct,
14 and I was using the phrase there
15 "competitive market" to refer to
16 absence of the challenged conduct.

17 BY MR. ISAACSON:

18 Q. And do you understand that
19 Dr. Singer is using foreclosure share and
20 using that to define both the actual
21 world and the reduced foreclosure share
22 as the but-for world?

23 A. I mean, I haven't studied
24 that or expressed an opinion on it.

Page 41

1 Q. Do you have any
2 understanding of -- what is your
3 understanding of foreclosure share as
4 Dr. Singer expresses it?

5 A. I mean, I haven't studied
6 that to express an opinion on that.

7 Q. And would you agree with the
8 statement that when monopsony power is
9 high, a firm is able to suppress a
10 worker's compensation below the
11 competitive level?

12 A. In general, yes, that is
13 what I think happens when you have
14 monopsony in the labor market.

15 Q. All right. And is it your
16 understanding that Dr. Singer is using
17 his definition of foreclosure share to
18 express Zuffa's degree of monopsony
19 power?

20 A. I mean, I haven't expressed
21 an opinion on that. I haven't been asked
22 to address that.

23 Q. Do you even -- I understand
24 you haven't expressed an opinion on

Page 42

1 whether that's appropriate. Is that your
2 understanding of what Dr. Singer is doing
3 here, that he's using foreclosure share
4 to express Zuffa's amount of monopsony
5 power?

6 A. I mean, he uses foreclosure
7 share in the actual world and then in a
8 but-for world, but I have not studied his
9 interpretation of it or expressed an
10 opinion -- expressed an opinion on what
11 his interpretation is or reflected on
12 what his interpretation is.

13 Q. Do you have an opinion about
14 whether the appropriate analysis in this
15 case would look at whether, when
16 foreclosure share is high, wages are low,
17 compared to when foreclosure share is
18 lower?

19 MR. CRAMER: Objection to
20 form.

21 MR. ISAACSON: It didn't
22 come out very well. I agree with
23 you.

24 BY MR. ISAACSON:

Page 44

1 now talking about level of pay
2 rather than wage share.

3 BY MR. ISAACSON:

4 Q. Yes.

5 A. It's important -- the
6 question here is to compare actual
7 compensation to what the compensation
8 would have been in the but-for world, so
9 it's a comparison not of the level.

10 Q. Okay. Would it be a proper
11 test of Dr. Singer's theory to relate
12 foreclosure shares to the actual
13 compensation in the real world compared
14 to the but-for world?

15 MR. CRAMER: Objection to
16 form. What do you mean by proper
17 test?

18 If you understand it, you
19 may answer it.

20 THE WITNESS: I mean, I
21 think my answer to the previous
22 question I think that I was
23 answering, I didn't really
24 understand the distinction between

Page 43

1 Q. Would you agree that the
2 question in this case would look -- would
3 compare high foreclosure shares to lower
4 foreclosure shares and look at
5 compensation in those two situations?

6 MR. CRAMER: Same objection.

7 You may answer if you
8 understand it.

9 THE WITNESS: No.

10 BY MR. ISAACSON:

11 Q. Okay. All right. Do you
12 think it's -- do you think Dr. Singer's
13 model would be -- would be appropriate if
14 foreclosure share is not correlated with
15 the marginal revenue product of labor?

16 A. I'm sorry, I didn't really
17 understand that.

18 Q. How about this? Would it be
19 a proper task of Dr. Singer to relate
20 foreclosure share to the level of athlete
21 pay?

22 MR. CRAMER: Objection to
23 form.

24 THE WITNESS: I mean, you're

Page 45

1 the two questions.

2 BY MR. ISAACSON:

3 Q. Well, you said the question
4 here is to compare actual compensation to
5 the compensation that would have been in
6 the but-for world.

7 Is it your understanding
8 that you should be comparing actual --
9 under Dr. Singer's analysis that when
10 you're comparing actual compensation to
11 but-for world compensation, you should be
12 looking at two different foreclosure
13 shares, a high foreclosure share and a
14 lower for foreclosure share?

15 A. I mean, I haven't -- I would
16 have to think about that. I haven't
17 expressed an opinion on -- on that. I
18 haven't thought about it.

19 Q. All right. Now, in your
20 report, do you reach any conclusions as
21 to whether non-athletic inputs as opposed
22 to just the contribution of athletes
23 contribute to event revenues?

24 A. I don't reach an opinion on

<p style="text-align: right;">Page 54</p> <p>1 to our -- to this case?</p> <p>2 A. Yeah.</p> <p>3 Q. It would be necessary in</p> <p>4 this case for that third factor to be</p> <p>5 true in order to use wage share to</p> <p>6 analyze compensation?</p> <p>7 A. I mean, I haven't -- I</p> <p>8 haven't given thought to that and I would</p> <p>9 have to think about that -- I would have</p> <p>10 to think about that before expressing an</p> <p>11 opinion on that.</p> <p>12 Q. Okay. Well, let me try it</p> <p>13 this way: If that third factor is not</p> <p>14 met, you would not -- you would not have</p> <p>15 an opinion in this case that it was</p> <p>16 appropriate to use wage share to analyze</p> <p>17 compensation?</p> <p>18 A. I mean, I would not put it</p> <p>19 like that. I mean, I expressed my</p> <p>20 opinion that it is appropriate because</p> <p>21 these facts are there. I have not</p> <p>22 considered at all whether if that</p> <p>23 situation was not satisfied there would</p> <p>24 be some other way to do that. So I do</p>	<p style="text-align: right;">Page 56</p> <p>1 way or other, as to whether it's</p> <p>2 appropriate to use wage share in</p> <p>3 analyzing compensation?</p> <p>4 A. But that alternative</p> <p>5 world -- I mean, I don't feel all the</p> <p>6 relevant factors in that alternative</p> <p>7 world and suddenly event revenue is not</p> <p>8 available are specified. So I mean, I</p> <p>9 have concentrated on expressing an</p> <p>10 opinion on how one should analyze things</p> <p>11 with the data that is available. I have</p> <p>12 not given thought to it or expressed any</p> <p>13 opinion on what would happen if you</p> <p>14 suddenly said event revenue was -- was</p> <p>15 not there.</p> <p>16 Q. All right.</p> <p>17 A. I mean, there are other --</p> <p>18 Q. Let me ask -- I don't mean</p> <p>19 to interrupt. Let me ask questions here.</p> <p>20 So I want to be clear. I'm</p> <p>21 not just saying if event revenue is not</p> <p>22 here. I'm talking about your third --</p> <p>23 because I'm not sure what you mean by if</p> <p>24 event revenue disappears.</p>
<p style="text-align: right;">Page 55</p> <p>1 not have an opinion on whether there</p> <p>2 isn't another alternative way or not.</p> <p>3 Q. All right. And -- but if</p> <p>4 you remove that third factor, as of</p> <p>5 today, you would not have an opinion one</p> <p>6 way or the other as to whether it was</p> <p>7 appropriate to use wage share in</p> <p>8 analyzing compensation in this case?</p> <p>9 A. I mean, I'm not sure. When</p> <p>10 you say remove -- remove --</p> <p>11 Q. If the third factor were not</p> <p>12 satisfied.</p> <p>13 A. So that we didn't have event</p> <p>14 revenue at all in this case you mean?</p> <p>15 Q. No. No. So if -- if it was</p> <p>16 not possible to ascribe a measurable part</p> <p>17 of a firm's revenue to the activities of</p> <p>18 a particular worker or group of workers</p> <p>19 in this case --</p> <p>20 A. But I feel one has to --</p> <p>21 Q. Let me finish the question.</p> <p>22 A. I'm sorry.</p> <p>23 Q. If that were not possible,</p> <p>24 you would not have an opinion today, one</p>	<p style="text-align: right;">Page 57</p> <p>1 You said something specific</p> <p>2 here, that it's possible to ascribe a</p> <p>3 measurable part of a firm's revenue to</p> <p>4 the activities of a particular worker or</p> <p>5 group of workers. If that were not</p> <p>6 possible, am I correct that as of today,</p> <p>7 you would not have an opinion that it is</p> <p>8 appropriate to use wage share in</p> <p>9 analyzing compensation? It is possible</p> <p>10 that you could go do additional analysis</p> <p>11 and find other factors to justify it, but</p> <p>12 as of today with that third condition,</p> <p>13 assuming that third condition has not</p> <p>14 been met, you would not have an opinion</p> <p>15 about whether it was appropriate to use</p> <p>16 wage share in analyzing compensation?</p> <p>17 A. Well, I think -- I'm still</p> <p>18 getting a little bit confused here. The</p> <p>19 event revenue is in this case, the part</p> <p>20 of the firm's revenue which is linked to</p> <p>21 the activities of a particular group of</p> <p>22 workers. So when you say that is not</p> <p>23 there, I find that hard to imagine what</p> <p>24 that means except that event revenue is</p>

Page 62

1 THE WITNESS: I mean, I
2 think that that is -- no, I don't
3 really accept that. I think it is
4 more generally just saying that
5 the workers are the key people.

6 BY MR. ISAACSON:

7 Q. All right. Now, why does
8 what you say in paragraph 24 together
9 with workers being key people mean that a
10 measurable part of a firm's revenue is --
11 can be ascribed to a group -- to a group
12 of fighters in this case? Where do you
13 get the measurable part?

14 A. I mean, I think the -- I
15 mean, what I meant by measurable part
16 here is really that there are techniques
17 available in order to control for this.

18 So if one takes Dr. Singer's
19 approach, he's seeing how variation in
20 the foreclosure effect affects the worker
21 share. All things being equal.

22 Q. All right. So as part of
23 your report, you did not do any work as
24 to whether -- do any work that would

Page 63

1 allow you to conclude that a measurable
2 part of a firm's revenue can be
3 attributed to any group of UFC fighters;
4 is that correct?

5 MR. CRAMER: Asked and
6 answered, form.

7 THE WITNESS: I mean, I
8 would simply, you know, repeat
9 what I said earlier that here is
10 some revenue coming from this
11 particular event, the fighters are
12 in that event, and so there is a
13 connection between the fighters in
14 that event and the revenue that
15 flows through that event.

16 BY MR. ISAACSON:

17 Q. But you did not try to
18 measure the amount of that connection; is
19 that correct?

20 A. I have not worked with the
21 data in this case.

22 Q. All right. And is all of
23 the event revenue for the Zuffa event
24 attributable to the fighters?

Page 64

1 MR. CRAMER: Objection to
2 form.

3 THE WITNESS: No. I mean,
4 the claim is not the workers
5 should have 100 percent of the
6 event revenue, that they would
7 have that in the but-for world.
8 The claim is that they would have
9 a higher share than they actually
10 had.

11 BY MR. ISAACSON:

12 Q. All right. And based on
13 your -- the work you've done in this
14 case, what is your understanding of what
15 factors contribute to event revenues?
16 You've named the role of athletes. What
17 else would contribute?

18 A. I mean, I haven't studied
19 that so I don't have an opinion on that.

20 MR. CRAMER: We've been
21 going for almost an hour. If this
22 is a good time to break, we can
23 break.

24 MR. ISAACSON: Sure.

Page 65

1 THE VIDEOGRAPHER: The time
2 is 10:12 AM. We're going off the
3 record.

4 (Recess.)

5 THE VIDEOGRAPHER: The time
6 is 10:25 AM. We are back on the
7 record.

8 BY MR. ISAACSON:

9 Q. Professor Manning, how
10 much -- approximately how many hours did
11 you spend preparing your report in this
12 case?

13 A. I mean, I haven't got the
14 exact figure in my head. I mean, I kept
15 a record of how many hours, so I think it
16 was -- I mean, up to what point?
17 Obviously I'm working on it now.

18 Q. Up to this submission --
19 spent on the report.

20 A. Okay. I'm afraid I haven't
21 got the exact figure in my head.

22 Q. All right. Can you give me
23 an approximate range?

24 A. I think it's around about

Page 66

1 30 hours.

2 Q. All right. Did anyone
3 assist you in preparing the report?

4 A. What do you mean by assist
5 in that sense?

6 Q. However you want to define
7 assist. Anybody who helped you in any
8 way?

9 A. Well, they are my opinions.
10 I mean --

11 Q. That wasn't my question. I
12 know that they're your opinions.

13 MR. CRAMER: You mean did he
14 have some kind of --
15 BY MR. ISAACSON:

16 Q. As broad as you want to take
17 it. I don't know.

18 A. Okay. Well, I mean, the
19 standard -- you know, like the front page
20 and the traditional way that that is
21 presented.

22 Q. Okay.

23 A. It was -- you know, that was
24 done for me.

Page 67

1 Q. Other than the caption on
2 this, you know, the actual report,
3 paragraphs 1 through 31.

4 A. Okay.

5 MR. CRAMER: Just so we're
6 clear, we have a stipulation in
7 this case that to the extent you
8 had communications with Counsel
9 that you're not relying upon, for
10 example, not relying upon for the
11 title page, that those
12 communications are not
13 discoverable.

14 MR. ISAACSON: We'll forgive
15 you if you relied on Counsel for
16 the title page.

17 BY MR. ISAACSON:

18 Q. But in terms of paragraphs 1
19 through 31, did anyone assist you in
20 preparing paragraphs 1 through 31?

21 A. I mean, not really assist.
22 I mean, I submitted a draft and then
23 there were minor edits after that draft
24 so...

Page 68

1 Q. Did you have -- did you work
2 with -- did you work with any non-lawyer
3 on the report?

4 A. Non-lawyer, no.

5 Q. Okay. And if you can look
6 at Exhibit B to the report.

7 A. Where is this?

8 Q. It's actually the last
9 page -- last page of the documents, I
10 believe?

11 A. Okay. Materials Relied
12 Upon.

13 Q. Yes, Material Relied Upon.
14 So Exhibit B is a complete set of
15 materials that you relied upon in
16 preparing paragraphs 1 through 31 of your
17 report; is that right?

18 A. Well, it's my general
19 experience of being a labor economist
20 that informs the views, but I'm not
21 citing every article that I've ever read
22 as a labor economist that has given me,
23 you know, knowledge that I think is
24 useful.

Page 69

1 I mean, these are the court
2 documents that I, you know, relied on,
3 and in the academic literature, those are
4 the ones that I -- the specific ones that
5 I referred to in my report.

6 Q. Right. So Exhibit B, which
7 is a requirement for these reports, talks
8 about materials. So it's not -- I don't
9 need to know about things that were in
10 your head from your experience, I
11 understand that. But are these materials
12 you relied upon -- is this a complete
13 list of the materials you relied upon in
14 preparing your report?

15 MR. CRAMER: Asked and
16 answered.

17 THE WITNESS: Yes. I mean,
18 they're the ones that I read when
19 I was doing this.

20 BY MR. ISAACSON:

21 Q. All right. And so it's fair
22 to say you did not review any piece of
23 the discovery record in this case?

24 A. I'm not --

Page 70

1 MR. CRAMER: Objection to
2 form.

3 THE WITNESS: I'm not quite
4 sure I understand. Discovery
5 record means?

6 BY MR. ISAACSON:

7 Q. Depositions, documents
8 produced, testimony, interrogatory
9 responses. The things that happen in
10 discovery.

11 MR. CRAMER: That were not
12 cited in any of the reports that
13 he reviewed?

14 MR. ISAACSON: I'm asking
15 him.

16 BY MR. ISAACSON:

17 Q. If you reviewed any of the
18 discovery.

19 A. This is in the report. Have
20 I read any of the transcripts of the
21 depositions and so on in producing --

22 Q. Well, let's start with that.
23 Okay. Let's break it down.

24 In preparing your report,

Page 71

1 did you review any deposition
2 transcripts?

3 A. No.

4 Q. Okay. In preparing your
5 report, did you review any documents that
6 were produced by plaintiffs, defendants
7 or third parties?

8 A. Not -- I mean, the report --
9 the expert reports refer to some of those
10 but I have not referred to those.

11 Q. And when expert reports
12 referred to documents, you did not go
13 back and review the documents that they
14 were referring to?

15 A. I mean, that was not part of
16 my assignment, no.

17 Q. All right. And you have not
18 read any deposition transcripts of --
19 well, prior to your report, you did not
20 review any deposition transcripts of any
21 of the experts in this case; is that
22 correct?

23 A. That's correct.

24 Q. Okay. And have you read any

Page 72

1 of the deposition transcripts since your
2 report of the experts?

3 A. I have.

4 Q. Okay. And whose deposition
5 transcripts have you reviewed?

6 A. Of Dr. Singer and
7 Dr. Zimbalist.

8 Q. All right. You have served
9 as an expert witness in one previous
10 case; is that right?

11 A. Yes.

12 Q. And that was High Tech
13 Employee Antitrust -- I almost called it
14 a High Tech worker?

15 MR. CRAMER: Employee.

16 BY MR. ISAACSON:

17 Q. High Tech Employee antitrust
18 litigation?

19 A. Yes.

20 Q. All right. And were you
21 retained in that case by the Saveri firm?

22 A. They were one of the -- I
23 mean, I'm not sure, they were not the
24 actual main people I had the contract

Page 73

1 with, but they were involved in the case,
2 I know that. I'm not quite sure what
3 retained -- you know, what the technical
4 term for that is.

5 Q. All right. And who first
6 contacted you about working in this case?

7 A. In this case?

8 Q. Yes.

9 A. I think that was -- my
10 recollection is that that was -- that was
11 Josh.

12 Q. All right. And did you give
13 a deposition in High Tech Employees?

14 A. I did.

15 Q. Have you ever given
16 testimony at trial as an expert witness?

17 A. At trial?

18 Q. Yes.

19 A. No, that case did not go to
20 trial.

21 Q. All right. That's the only
22 other -- this is the second case in which
23 you've served as an offered expert
24 witness?

Page 90

1 product of labor, then you can conclude
2 that if event revenues double, then
3 marginal revenue product of labor has
4 doubled?

5 A. I'm sorry, could you just
6 read that back?

7 Q. Sure.

8 A. I'm a bit confused.

9 Q. So is what you're saying is
10 that if revenues are proportional to the
11 marginal revenue product of labor, then
12 you can conclude that if event revenues
13 double, then the marginal revenue product
14 of labor has doubled?

15 MR. CRAMER: Objection to
16 form.

17 You may answer if you
18 understand.

19 THE WITNESS: I think the if
20 at the start I didn't really
21 agree, and I think I prefer my
22 previous answers to --

23 BY MR. ISAACSON:

24 Q. Have you done any work in

Page 91

1 this case -- have you done any work
2 reflected in your report that shows
3 that -- that in order for event revenue
4 to double, the marginal revenue product
5 of athletes at the event has to double?

6 MR. CRAMER: Objection to
7 form.

8 You may answer.

9 THE WITNESS: I mean, I
10 haven't studied, you know, the
11 data, the particular situations,
12 so I haven't got an opinion on
13 that.

14 BY MR. ISAACSON:

15 Q. All right. Is -- the first
16 sentence in paragraph 27 is followed by
17 the sentence, "So the marginal revenue
18 product will be proportional to the event
19 revenue," are you -- is the first
20 sentence in paragraph 27 an example of
21 what happens when event revenue and
22 marginal revenue product are proportional
23 to one another?

24 MR. CRAMER: Is that all it

Page 92

1 is or -- form.

2 You may answer if you
3 understand.

4 THE WITNESS: Yeah, I'm
5 sorry, I'm not quite sure I'm
6 understanding. Can you either
7 read it back or re-express it.

8 BY MR. ISAACSON:

9 Q. All right. So paragraph 27
10 concludes -- again this is my effort to
11 understand what you have written.

12 A. Okay.

13 Q. Paragraph 27 concludes:

14 "The marginal revenue" --
15 "So the marginal revenue product will be
16 proportional to the event revenue."

17 Is the first sentence in
18 that paragraph an example -- are you
19 presenting an example of what happens
20 when marginal revenue product is
21 proportional to event revenue?

22 MR. CRAMER: Form.

23 You may answer.

24 THE WITNESS: The first

Page 93

1 sentence in paragraph 27 is, you
2 know, inviting them to think about
3 a hypothetical situation in which
4 event revenue doubles, and to say
5 that, yes, then the marginal
6 revenue product of labor will
7 double as well. So they're not --
8 they can vary independently in
9 that example. So it's simply a
10 way of expressing proportionality,
11 although perhaps it seems not a
12 very clear way.

13 BY MR. ISAACSON:

14 Q. And maybe it's helpful just
15 to state that the first sentence in
16 paragraph 27 is a hypothetical that
17 you're discussing; is that correct?

18 MR. CRAMER: Objection to
19 form.

20 You may answer.

21 THE WITNESS: I mean, I
22 haven't worked with the data in
23 this case. I mean, so it's
24 hypothetical, but I think it's --

Page 94

1 you know, it's a very plausible,
2 reasonable hypothetical.

3 BY MR. ISAACSON:

4 Q. And do you have an opinion
5 as to whether the marginal revenue
6 product of inputs to events other than
7 the athlete is proportional to event
8 revenue?

9 A. I mean, I haven't worked
10 with the data in this case, so I haven't
11 got an opinion on that in this case.

12 Q. And for your opinion in this
13 case in paragraph 5, that wage share is
14 an appropriate way to analyze the
15 compensation of MMA fighters in this
16 case, is one premise for that conclusion
17 that event revenue is plausibly
18 proportional to marginal revenue product?

19 A. I mean, this is holding, you
20 know, other things equal, yes.

21 Q. And if marginal revenue
22 product is not shown to be proportional
23 to event revenue in this case, am I
24 correct you would not be able to reach an

Page 95

1 opinion, without at least further
2 analysis, of whether wage share is an
3 appropriate way to analyze the
4 compensation of MMA fighters in this
5 case?

6 MR. CRAMER: Objection to
7 form.

8 You may answer.

9 THE WITNESS: I mean, I
10 haven't considered the other case,
11 so that, I mean, I haven't got an
12 opinion. I would have to -- have
13 to think about that. But that
14 isn't the same as saying it would
15 not be possible.

16 BY MR. ISAACSON:

17 Q. All right. Would you agree
18 that if the marginal revenue product of
19 the inputs other than the athletes was
20 not proportional, then the -- to event
21 revenue, then the marginal revenue
22 product of the fighters would also not be
23 proportional?

24 MR. CRAMER: Objection to

Page 96

1 form.

2 THE WITNESS: I don't think
3 that -- I mean, I haven't thought
4 about that, so I would have to
5 think about that.

6 BY MR. ISAACSON:

7 Q. All right. Based on your
8 work as a labor economist, do you think
9 it's accepted that higher wages for
10 workers means that they will be retained
11 more effectively?

12 A. I mean, higher wages
13 relative to alternatives that they might
14 have. I mean, so I think it's more an
15 expression not of the level of wages, but
16 wages in one firm relative to other
17 opportunity. And obviously in this case
18 those other opportunities are being
19 restricted.

20 Q. Do you agree that those in
21 higher paid jobs are less likely to look
22 for other jobs?

23 MR. CRAMER: Objection to
24 form.

Page 97

1 THE WITNESS: I have -- you
2 know, I have done some, I believe
3 in the book that I wrote in 2003
4 there was some regressions that
5 they were looking at -- and this
6 is controlling for other factors,
7 and one has to understand that
8 that's across the whole of the
9 market, so I would not draw the
10 conclusion from that, that that
11 was -- the conclusions of those
12 regressions would be applicable in
13 this particular case, to this type
14 of labor, which is -- you know, is
15 rather different in some ways from
16 what most people are doing.

17 BY MR. ISAACSON:

18 Q. So while you would not
19 necessarily apply that conclusion here,
20 it's fair to say that based on the work
21 you've done, that generally in the labor
22 market, those in higher paid jobs are
23 less likely to look for other jobs?

24 A. It's higher paid relative to

Page 118

1 dependent variable; is that correct?

2 A. The datasets that I'm using
3 in this chapter simply would -- do not
4 have data that's available to use, a
5 computer wage share.

6 Q. But am I correct that for
7 this regression you used wages, not wage
8 share as the dependent variable?

9 A. These are the -- I mean, the
10 log of wages, but I think there are also
11 some regressions in which I do it the
12 other way round, what I call the reverse
13 regression.

14 Q. Well, let's go to the
15 reverse regression, which is page 91.
16 Let me just -- let me make sure. We're
17 going to go through each one of these.

18 A. Sure.

19 Q. Let me just -- for the first
20 regression at page 81, you used the log
21 wages, meaning you used actual wages and
22 not wage shares as the dependent
23 variable; is that correct?

24 A. I could not have used wage

Page 119

1 share, so this is not a choice, this was
2 a necessity.

3 Q. Right. But you did use
4 wages?

5 A. I did -- yes, log wages is
6 what ends up on the left-hand side of
7 these regressions.

8 Q. All right. Now, on 4.3,
9 Reverse Regressions, this method involves
10 estimating a regression on employment on
11 wages, correct?

12 A. Well, log employment and log
13 wages without a controlling --

14 Q. All right. And you just
15 referred to log wages. This method used
16 wages not wage shares though as the
17 dependent variable; is that right?

18 A. It's the same dataset, so
19 again, that was not a choice but a
20 necessity.

21 Q. All right.

22 THE VIDEOGRAPHER: Excuse
23 me, Counsel. We're about ten
24 minutes away from the end.

Page 120

1 MR. ISAACSON: All right.

2 Let me see if I can get through
3 this chapter.

4 BY ISAACSON:

5 Q. Now -- then going to page
6 96. This is another -- a third method
7 that you're proposing.

8 A. I think I would say I'm
9 discussing.

10 Q. Discussing. Okay. The
11 third method that you're discussing. And
12 this method involves estimating the
13 elasticity of recruitment and elasticity
14 of quitting, comparing the two; is that
15 right?

16 A. I'm not sure -- it's
17 estimating how sensitive are separations
18 to wages holding other things equal.

19 Q. All right. And this method
20 doesn't use wage share in any way; is
21 that correct?

22 A. Again, the same datasets and
23 so there is no way to compute wage share
24 in these datasets, and so that is not a

Page 121

1 choice but a necessity.

2 Q. All right. Is there a
3 regression you believe that would be
4 found in your book in which you proposed
5 any methods for testing monopsony that
6 involved wage share as the dependent
7 variable?

8 A. I mean, the datasets -- of
9 the datasets that I used in that book,
10 and there are really quite a lot of
11 datasets, I don't think there was any
12 datasets which would have allowed the
13 computation of wage share.

14 Q. All right.

15 MR. ISAACSON: Why don't we
16 change tape?

17 MR. CRAMER: Take a break?

18 THE VIDEOGRAPHER: The time
19 is 11:21 AM. We're going off the
20 record. This is the end of Disk
21 1.

22 (Recess.)

23 THE VIDEOGRAPHER: The time
24 is 11:33 AM. This is the start of

Page 122

1 Disk 2. We're on the record.

2 BY MR. ISAACSON:

3 Q. If we can look at paragraph
4 30 of your report. You discuss a
5 criticism of Dr. Topel's report and you
6 discuss the concept of endogeneity, if
7 I'm saying that correctly?

8 A. Endogeneity. I would say --
9 it's a British, you know, accent. I
10 don't know if you prefer to say our way
11 of --

12 Q. Yeah. How do you say it
13 your way?

14 A. Endogeneity.

15 Q. Endogeneity. Okay. The --

16 MR. ISAACSON: That's how
17 it's spelled no matter how you
18 pronounce it.

19 BY MR. ISAACSON:

20 Q. All right. Now, as I
21 understand it, under your critique, event
22 revenue, which Professor Topel includes
23 on the right-hand side of his regression
24 is endogenous with the level of athlete

Page 123

1 compensation, which is Professor Topel's
2 dependent variable.

3 Do I have that correct?

4 A. Well, endogeneity refers to
5 a situation when the right hand, which is
6 the variable here, event revenue, is
7 correlated with the residual and
8 regression. So this is the part of the
9 dependent variable that cannot be
10 explained by the other variables.

11 So it's not -- I don't think
12 it's quite the way you expressed it. So
13 it's more about the correlation -- it is,
14 it is not more about, it is about a
15 situation where the residual of the
16 regression is correlated with the -- a
17 regressive, in this case event revenue.

18 Q. By the residual in the
19 regression, do you mean the dependent
20 variable or something else?

21 A. No, that's something else.
22 That's the part of the dependent variable
23 that you cannot explain using the
24 regressors.

Page 124

1 Q. All right. So do I have
2 this right: So your -- the criticism
3 would be that event revenue on the
4 right-hand side of the regression -- let
5 me start over.

6 So assuming that event
7 revenue is correlated with part of the
8 dependent variable, then you're unable
9 to -- then the regression is flawed, is
10 that the critique?

11 A. I mean, I think that way of
12 expressing it -- I mean, I prefer, and
13 this is a technical concept, so I
14 prefer -- I mean, I understand the
15 attempt to express it in perhaps less
16 technical language, but I think in order
17 to be accurate, that wouldn't be a way in
18 which it would be technically expressed.

19 Q. Well, you're right about
20 what I'm attempting to do, but I'm not
21 trying to be inaccurate. So let's see if
22 we can meet with something that a
23 layperson can understand but that's also
24 technically accurate.

Page 125

1 The -- so under your
2 critique, event revenue is endogenous
3 because if athlete compensation goes up,
4 then event revenue goes up; is that
5 right?

6 A. I'm -- I'm sorry, could you
7 say this again? That if --

8 Q. Well, let me -- so the --
9 the endogeneity here comes from event
10 revenue; is that right?

11 A. So event revenue is, yeah,
12 the endogenous variable in this.

13 Q. Right. And the event
14 revenue is the endogenous variable
15 because if fighter compensation goes up,
16 then event revenue goes up; is that
17 correct?

18 A. I mean, that's -- I mean I
19 think that's not really how it would be
20 expressed. I mean, if I translated that
21 into technical language, that is not the
22 technical definition of endogeneity. So
23 what -- I'm slightly worried that that
24 would then be misinterpreted as an